

Introduced by Senator Hughes

February 24, 1997

An act to add Section 10235.3 to the Business and Professions Code, and to add Section 2953.6 to the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

SB 589, as introduced, Hughes. Real property: secured loans.

(1) Under existing law, it is a misdemeanor for an applicant for a loan to be secured by real property to knowingly make a false statement in writing respecting his or her financial condition for the purpose of procuring the loan.

This bill would provide that the creditor on a loan secured by a deed of trust or mortgage on real property containing only an owner-occupied dwelling may rely on the borrower's representations of the amount of effective gross income available to the borrower, unless there is a reasonable basis for not believing that the borrower's representations are true and correct, as specified, or may rely on the creditor's independent inquiry or 3rd-party verification of effective gross income. The bill would provide that the creditor shall require the borrower to obtain independent advice and counseling from specified persons under certain circumstances.

The bill would also require the Business, Transportation, and Housing Agency to develop forms to warn borrowers that their loan is an at-risk loan, as specified.

(2) Under existing law, it is a misdemeanor for a person, other than the applicant for a loan to be secured by real property, to knowingly make a false statement in writing respecting another's financial condition, in whom he or she is interested, for the purpose of procuring the loan.

This bill would provide that a real estate broker may make a representation that the borrower has the reasonable financial ability to repay a loan secured by a deed of trust or mortgage on real property containing only an owner-occupied dwelling, in the time and manner provided in the loan contract, or to refinance the loan at maturity, as specified. The bill would authorize a creditor to rely on that representation. The bill would require the broker to make an independent inquiry of the effective gross income available to the borrower unless there is a reasonable basis for believing that the borrower's representations are true and correct.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10235.3 is added to the Business
2 and Professions Code, to read:
3 10235.3. (a) This section applies to any loan secured
4 by a deed of trust or mortgage on real property
5 containing only an owner-occupied dwelling. A real
6 estate broker may make a representation that the
7 borrower has the reasonable financial ability to repay the
8 loan in the time and manner provided in the loan
9 contract, or to refinance the loan at maturity. A creditor
10 may, but is not required to, rely on that representation.
11 In making a representation of the borrower's financial
12 ability, the real estate broker shall make an independent
13 inquiry of the effective gross income available to the
14 borrower, and of all recurring charges, unless there is a
15 reasonable basis for believing that the borrower's
16 representations about effective gross income and
17 recurring charges are true and correct. A real estate
18 broker may reasonably conclude that a borrower has the
19 financial ability to make the monthly installments of



1 principal and interest on the loan when the total monthly
2 debt service on all loans secured by the property, housing
3 expenses, and other recurring charges not to be
4 extinguished from the loan proceeds, on which periodic
5 payments exceed a term of six months following the date
6 of contemplated funding of the loan, are less than 60
7 percent of the borrower's effective gross income.

8 (b) The creditor and the real estate broker shall
9 comply with all applicable provisions of Section 2953.6 of
10 the Civil Code.

11 (c) The definitions provided in subdivision (j) of
12 Section 2953.6 of the Civil Code apply to this section.

13 SEC. 2. Section 2953.6 is added to the Civil Code, to
14 read:

15 2953.6. (a) This section applies to any loan secured by
16 a deed of trust or mortgage on real property containing
17 only an owner-occupied dwelling.

18 (b) Creditors on loans may rely on the borrower's
19 representations or the creditor's independent inquiry or
20 third-party verification of the amount of effective gross
21 income available to the borrower. The borrower's
22 representations concerning effective gross income,
23 housing expenses, and other recurring charges may be
24 relied on unless there is a reasonable basis for not
25 believing that the borrower's representations are true
26 and correct.

27 (c) The creditor shall consider the following factors in
28 determining the borrower's ability to pay:

29 (1) Whether or not a notice of default has been
30 recorded against the property which is being offered as
31 security for the loan within 24 months of the date of the
32 application for the loan.

33 (2) Whether or not the borrower has commenced a
34 proceeding in bankruptcy within 24 months of the date
35 of the application for the loan.

36 (3) Whether or not the borrower has two or more
37 judgments against him or her in the amount of more than
38 one thousand dollars (\$1,000), which judgments become
39 a lien upon the real property which is being offered as
40 security for the loan. If, upon the creditor's reasonable

1 inquiry, the creditor determines that any of the above
2 factors exist, the creditor may not rely solely upon the
3 representations of the borrower without obtaining
4 verification of the amount of effective gross income
5 available to the borrower.

6 (d) Should any of the factors listed in subdivision (c)
7 exist, and the creditor has not made an independent
8 inquiry or obtained third-party verification of the amount
9 of effective gross income and expenses, or should the total
10 monthly debt service on all loans secured by the
11 borrower's owner-occupied dwelling, including the loan
12 contemplated, housing expenses, and other recurring
13 charges, exceed 60 percent of the borrower's effective
14 gross income, the creditor shall require the borrower to
15 seek and obtain independent advice and counseling from
16 a professional authorized by this section. Independent
17 advice and counseling may be provided by one of the
18 following:

19 (1) A counseling agency authorized by the United
20 States Department of Housing and Urban Development
21 (HUD) in the region where the indicated security
22 property is located.

23 (2) A nonprofit neighborhood or community housing
24 or community counseling service.

25 (e) If fees are charged by the person or entity
26 providing the independent advice and counseling
27 pursuant to subdivision (d), they may be paid for or
28 reimbursed by the creditor without establishing an
29 agency or principal relationship between the creditor
30 and the person or entity providing the advice and
31 counseling. Creditors are prohibited from referring
32 borrowers to the creditors' agents, affiliates, or family
33 members for the independent advice and counseling.
34 Creditors shall not be liable for the content of the advice
35 given to the borrower by any of the professionals
36 authorized to provide independent advice and
37 counseling pursuant to this section.

38 (f) Counseling shall be deemed complete upon
39 receipt by the creditor of a written statement from either
40 the counselor or the borrower stating that counseling has

1 been completed. The creditor may complete the
2 contemplated loan transaction, despite the advice of the
3 counselor, if the borrower determines the loan to be in his
4 or her best interest.

5 (g) The creditor shall provide the following notice to
6 the borrower in at least 12-point bold type:

7
8 NOTICE TO BORROWER

9
10 (In both English and Spanish)

11
12
13
14 The creditor is relying upon your income and expenses as
15 stated in this application to be true and correct. You are
16 responsible for all of the information shown on your application
17 forms even if your broker filled them out. If your financial
18 condition as shown on the application is not true and correct and
19 you are unable to make payments on your home loan(s), your
20 property may go into default and you may lose your property
21 by foreclosure. Misrepresenting your financial condition could
22 be a violation of Section 532f of the Penal Code.
23

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25 (h) The validity of any credit document subject to the
26 provisions of this section shall not be invalidated solely
27 because of the failure of any person to comply with this
28 section. However, any person who willfully violates any
29 provision of this section shall be liable in the amount of
30 actual damages suffered by the creditor or borrower as
31 the proximate result of the violation, plus costs and
32 reasonable attorney's fees. Borrowers may also recover a
33 civil penalty equal to twice the amount of the monthly
34 finance charge, but not more than one thousand dollars
35 (\$1,000) or less than one hundred dollars (\$100).

36 (i) The Business, Transportation and Housing Agency
37 shall develop a form to be used by the independent
38 counseling agency for the purpose of warning borrowers
39 that the loan which they have applied for is an at-risk loan.

1 That form shall be signed by the borrower and the
2 creditor acknowledging the loan at-risk status.

3 The independent counselor shall have the loan
4 applicant read and sign the form. The form shall include
5 the following notice to the borrower in at least 12-point
6 type:

7
8 NOTICE TO BORROWER

9
10 (In both English and Spanish)

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12
13
14 It has been determined that the total monthly debt service
15 on all loans secured by the borrower's owner-occupied
16 dwelling including the loan contemplated, housing expenses,
17 and other recurring charges, exceed 60 percent of the
18 borrower's effective gross income and constitute an At-Risk
19 loan.
20

21
22 (j) For purposes of this section:

23 (1) "Agent" has the meaning provided in Sections
24 2295, 2299, and 2300.

25 (2) "Creditor" includes any person who originates two
26 or more real property secured loans in any 12-month
27 period or any person who originates one or more real
28 property secured loans through a loan broker.

29 (3) "Effective gross income" means continuing
30 income from all sources, reasonably expected to be
31 available during the first two years of the loan obligation,
32 without any deduction for income taxes or other items.

33 (4) "Housing expenses" includes all payments for
34 principal, interest, loan or mortgage insurance charges,
35 ground rent or leasehold charges, real estate taxes, hazard
36 insurance, and homeowner's association or condominium
37 fees, but does not include utility costs.

38 (5) "Recurring charges" includes all payments where
39 the obligation is expected to continue for six months or
40 more on automobiles loans, furniture loans, student loans,

1 installment loans, revolving charge accounts, alimony or
2 child support, child care, and any other debts.

3 (6) “Owner-occupied dwelling” means a
4 condominium or cooperative, or any parcel containing
5 only residential buildings if the total number of units on
6 the parcel is four or less, provided the borrower actually
7 occupies the dwelling or advises the creditor in writing
8 that he or she will occupy the dwelling within 90 days of
9 loan completion.

10 (7) “Borrower’s personal financial emergency” means
11 that the borrower has determined he or she needs
12 immediate funds to preserve the welfare, health, or safety
13 of natural persons whom the borrower is responsible for
14 or property which the borrower owns or is responsible
15 for.

16 (8) “Total fixed expenses” means the sum of the
17 borrower’s housing expenses and other recurring
18 charges.

19 (9) An at-risk loan shall be defined as a loan which has
20 a higher level of risk for default by a borrower.

